MR. EHRMANN: Are the members comfortable with these recommendations? Okay, let's move then to
incentives, disincentives, et cetera.

(Slide.)

COMMISSIONER SANDIFER: On a number of occasions at differing discussions and differing commissions, from Dr. Rosenberg to Admiral Gaffney and others, have talked about the necessity to have some default mechanisms in place in a variety of areas.

This one deals specifically with nonpoint source and watershed pollution. The intent is just to bring forward some ideas of what both positive and negative feedback might look like.

Under the current laws, the Clean Water Act gives states the lead role in addressing nonpoint source pollution. It does not give EPA the legal authority to establish and enforce BMPs on nonpoint sources, nor to implement and enforce nonpoint source
management measures that may be developed for

watersheds.

So there is a suite of federal tools that could be utilized and phased in over time. The intent here is--I think staff uses it--all parties
would know what's coming next. I call it the "no

surprise rule."

Again, people are involved at the local

and national level in the formulation of these kinds

of incentives and disincentives from the beginning.

They clearly know what happens next.

There is a legal and policy precedent,

particularly in the Clean Air Act. If a state does

poorly and does not meet Clean Air standards for some

period of time, then the state may lose Federal

Highway Funds.

This was a significant element, for

example, in my neighboring State of Georgia, just

across the way from us in South Carolina, the

Metropolitan Area of Atlanta was not meeting air

standards and was about to lose a significant amount

of Federal Highway Funds.

If you have driven in Atlanta lately, you
would like to see them spend some funds to fix the transportation problems in that area.

But they implemented a variety of things, including land protection, green space protection,
and all kinds of things to try to clean up their act.

There was a disincentive that they would lose significant federal funds, and an incentive for them to move forward to take a variety of actions from regulatory to things that were nonregulatory like buying up green space.

The intent here is that the Federal Government would be in a default position to step in only if all else fails. So the States would still be in charge of their destinies, but they would-- hopefully through a negotiation process--come to the point of agreeing that, if things got so that the state could not control it, that is if it failed, then there would be a federal default mechanism.

This would require data-gathering mechanisms. As we've talked about earlier, this is one more subset of the necessary national monitoring kinds of efforts. It is not a new data gathering
system. It would fit right in to whatever the coastal and ocean and water quality and air quality monitoring system we're talking about.

Again we talked about what is coming next.
It would only be--this kind of default mechanism
would only be phased in if a state did not make
reasonable progress, and it would be as incentive-
based as opposed to disincentive-based as practical.
Next slide.

That's it. Sorry. We have in our paper,
in fact you may have a few of these additional things
before you because we took out slides, to meet the
standards imposed upon us for the sessions--

VOICE: But you're going to discuss them
anyway--

(Laughter.)

COMMISSIONER SANDIFER: --I'm going to
discuss them anyway.

The kinds of things that I was just
talking about. The states would lead. The Federal
Government would control only if the states do not.
But a couple of places where you can work with this
is through USDA's for example the Farm Bill kinds of conservation funds. Those are incentives, and perhaps those incentives could be increased.

A disincentive would be the state didn't
get to have their share, or as much of their share of
those kinds of funds if they did not either meet the
nonpoint source requirements or begin to make
reasonable progress toward them.

There might be tax incentives, Federal
Highway monies we just talked about, Army Corps of
Engineers Waterway Development Funds could be treated
the same way, WRTA funds, that's a big deal in a lot
of areas. Lillian and others are very knowledgeable
about those. Perhaps there could be a mechanism that
could connect at least some of those funds to good
behavior on the part of the states.

So that the first step here would be for
the state to participate in the development of goals
and objectives, and then to try to make reasonable
progress.

Failure to make reasonable progress would
result in disincentives of the financial nature.
Continued failure would then result in the Federal Government actually stepping in to set standards for the states. That is basically the philosophical
approach we're talking about. The paper will have a
lot more detail than that.

I'll stop there.

MR. EHRMANN: Thank you. Commissioner

Coleman?

COMMISSIONER COLEMAN: Paul, on one of the
slides that you didn't put up, the states are to lead
on nonpoint source pollution.

COMMISSIONER SANDIFER: Right.

COMMISSIONER COLEMAN: But it does get
very complicated, and especially in these large
watersheds.

For example, I am at the southern end of
one of the larger drainage basins in North America,
the Mississippi. We will never meet the regulations
and EPA Guidelines simply because we have 25 or 30
other states upstream.

How do you handle that?
COMMISSIONER SANDIFER: We did have some discussions on this. While we didn't use the technical term for where you are, the cloaca of the Mississippi, I think there is clearly recognition...
amongst all of us that there would have to be a realization of differing standards for being at the end of a receiving chain.

And in fact, what staff has made clear to us from the beginning is: nonpoint source pollution is a much more significant problem in some areas than others, and that's why we kept talking about the states and locals having the lead. Because it is no use at all to have a one-size-doesn't-fit-all but imposed anyway federal standard that in inland Oregon there's no reason for it at all, or wherever, but in Mississippi it is a big deal, or in Iowa it's a big deal.

So that was the reason for trying to have the states take the lead in consultation with EPA, depending on the level of local impairment and the downstream impact. So that is what we were trying to
I don't know whether the paper will adequately address it, but that was the attempt.

MR. EHRMANN: Commissioner Rosenberg?

COMMISSIONER ROSENBERG: Thank you. I
just have a very brief comment.

I want to thank Paul for his long, scatological conversation this afternoon. It's been fascinating.

(Laughter.)

COMMISSIONER ROSENBERG: I strongly support the idea of incentive/disincentive/and backstop mechanisms, as I think you are well aware.

I just think that in the language we should be careful to make sure that it is not just applying those kinds of incentives or disincentives to state activities, but it is also to private activates.

Because of course we do provide a lot of subsidy assistance programs, so it needs to be in there.

COMMISSIONER SANDIFER: That is the intent, Andy. I was using the government as the example, but it is the intent at any level that there
would be an activity.

MR. EHRMANN: Commissioner Miller-Karger?

COMMISSIONER MULLER-KARGER: Thank you. I was wondering how, or whether there is a similar mechanism as this to all the other things that we've
talked about, like the Section 404 and the Louisiana
being careful not to lose more wetlands themselves.
or atmospheric deposition, the cruise ship issue, the
debris issue. Is this a formula that should be
applied wider? Here it is limited in this slide to
nonpoint source pollution and watershed pollution.

COMMISSIONER SANDIFER: The concept of
incentives and disincentives and default, I believe,
Frank, has been talked about enough in our working
group that it would apply to virtually any of the
stewardship issues.

We began talking about it first with
regard to Fisheries Management issues. And even
within state water, fisheries having a federal
default mechanism if the activities in the state
waters were affecting the resources of adjacent
states, and so on.

So I think the intent of the working
group, as I understood it, and a number of Commissioners in discussions, is to make this broader. The assignment to staff was to look specifically at nonpoint source for this one because
nonpoint source was such an egregious problem with regard to pollution in this country. And if we could come up with some things that might be worth pursuing that the Commission felt as a whole might be worth pursuing here, then we could broaden that discussion to these other elements, or staff could broaden it out a little bit and send them around to us. But I would really ask them to go back and look at legal precedents and such, and that is where the Clean Air Act and the Air Emissions kinds of things hooked to Transportation Funds came up, and now the possibility of taking water quality standards perhaps and linking it to USDA conservation funding program. Those might be some things that are worth exploring.

So that's what they were doing, is using this as a concept vehicle. But if it looked
promising to the Commission, we could broaden that.

MR. EHRMANN: Commissioner Borrone?

COMMISSIONER BORRONE: I think it is useful as a concept to apply it to a particular
example like NPS.

I would, though, be very cautious to think about running it to make it a wholesale recommendation. I think what we might do is make a recommendation that if this process could evolve in a way to be effectively used for this kind of issue, as other issues emerge in the future the National Ocean Council might look at whether this has applicability or not.

Because I would hate, if I were in a local area or a state, to find myself now confronted with the potential of tremendous disincentives and trying to deal with them all at the same time because I don't have the ability to do certain things because I don't have enough resources.

In other words, I don't want an unfunded federal mandate.

COMMISSIONER SANDIFER: Lillian, while I
did try to generalize this a little bit, I remind you

that on the slide, the last point is: Incentive-

based, as incentive-based as possible.

I talked about some of the disincentives
because those are in law, but what we really want to find is the incentive side of this. That is the side that really allows I think to make progress.

And it is not necessarily a financial incentive. It could be, but it could be other things, as well. For example, somebody who is a very, very good performer and has done all these things that need to be done on a farm or whatever and has really demonstrated reduction, significant reduction in nonpoint source, maybe they get either tax credits, which of course is financial, or maybe they get some regulatory relief in just not having to file five more pounds of paper next year because they've already demonstrated that they are operating in good faith and doing what they're supposed to do.

You know, it's the "trust me" rule based on: I did it, so trust me for next time and come back and check me another year from now, as opposed
to having to file five pounds of paper.

I mean it's those kinds of things that I think we could think of a little bit more regarding the incentive side.
MR. EHRMANN: Let me ask if any of the staff have any questions, or need any more information on any of the stewardship discussion we've had since lunch?

(No response.)

MR. EHRMANN: Yes, Commissioner Coleman.

COMMISSIONER COLEMAN: Thank you, John.

I want to take the opportunity right now, since this may be possibly our last public meeting, to sincerely thank the staff. I am sure I speak for all of the Commissioners.

When we started this project, we brought in staff that probably didn't know one another, they were from different backgrounds, and we had a wide variety. And I have never worked with a staff that has solidified a Commission like this one has.

You have done the work, and so thank you very much on behalf of all the Commissioners.
(Applause.)

MR. EHRMANN: Mr. Chairman?

CHAIRMAN WATKINS: I had some asides with the Executive Director here because the dialogue
today, and really the dialogue in January, has been
so significant relative to the slides.

We've put up these slides and made them
available on the web site because they've been made
public, and they hardly tell the tale by themselves;
and we know that.

So because our minutes, and because this
dialogue is recorded by the recorder, and we've made
that part of our minutes, I have asked the Executive
Director, and in turn he will ask the staff to come
up with a set of words that will go on each one of
these slides.

It will say: These slides were presented
in public session. Significant dialogue, comments,
recommendations for change were made. And refer them
to the verbatim transcript. If they're going to take
anything out of this, then they'd better go to the
whole package and don't try to take on the Commission
by partial review of just a simplistic set of slides that we recognize in the time constraints that the Commission has imposed on it are the only things we can bring here.
We had, as somebody said, some 90 slides but we could never have gotten through this. We had to consolidate. So there is a lot of information behind these slides and these recommendations that are yet to come. But certainly the dialogue that we've had recorded in each case can be put on the web site and will be within a couple of weeks, and we will hold up putting these on the web site until such time as we have the verbatim transcript ready to put thereon as well.

As you know, the verbatim transcript from prior meetings are now on our web site. So anybody, audience or anybody else, using these, it would only be fair to listen to the entire dialogue plus these slides as the minimal way to bring these to the attention under the Federal Advisory Act Procedures that we're following.

So I just make that statement.
I would like to take a break now until 3:30. Be back here and we will commence the public comment here.

MR. EHRMANN: Commissioner Gaffney would
like to make a comment, I think.

COMMISSIONER GAFFNEY: Before you break?

CHAIRMAN WATKINS: Go ahead, Paul.

COMMISSIONER GAFFNEY: Admiral, I think that within the allotted time we checked every single block. We had 40, or 50, or 100 different topics to addressed. And within the amount of time we were allocated, we checked every block and we presented those here.

Some of the results of checking every single block within the allotted time, some of the results are less throaty than others.

When our recommendation is to urge: Send money; coordinate more often; study; generally do better, we ought to have the courage, just because we put it up here, to just say we can't add anything to the debate and we ought to drop it. That's a suggestion I have.
Just because we covered every block here doesn't mean, to me, that we have to cover every block in the end, if we don't have something throaty and useful to say.
CHAIRMAN WATKINS: Well I agree with that.

But, you know, we have agreed on the Commission, and we have announced this publicly--and maybe it is the time to do it again--that these are working papers.

Decisions have not been finalized.

No Commissioner has voted on anything, and will not until the entire package is available to us so we can see all of the justification for the recommendations we made.

And certainly recommendations that don't have any stuff to them, no substance along the lines that Admiral Gaffney mentioned, are not going to be included. But that is for us to weed out as we begin to package these things up and integrate them across the working groups.

For public knowledge, we are out of the working group business as of now. We are moving into the Commission as a whole, and we have set up
procedures to follow the Commission as a whole, which means that everything will go out to the Commission as a whole on all issues. Comments will come back. We will treat
them at the staff level, at my level, at the

Executive Director level, not by the individual

associate directors who have been working hand-in-
glove with the chairs of the working groups. There

will be a new process that now we're beginning to

really put pen to paper and take all of these things

and integrate them in the proper way.

When we do that, things will change. No

question about it. We may find that we have gaps in

our thinking that need to be filled up. We may have

excesses in there that seem to be able to be dropped

off along the lines just discussed.

So we are commencing that process now of

what we call phase three of our process, going from

fact-finding to deliberation in public, to writing

the papers.

We will be in the Federal Register with

our draft sometime later on in the summer, and that
will be then available to everyone. It will be sent out specifically to the governors, and all comments then will come in, redraft, and go out again to the President on his desk.
So that is the general process we're going to follow. And we certainly have I think benefited from the open dialogue between Commissioners just today alone. We have gained a lot of cross-talk experience here that is very important, and things will have to be modified significantly. So are there any other points that need to be raised now before we take a break?

(No response.)

CHAIRMAN WATKINS: Okay, we'll take a break. Be back here a little after 3:30.